

Report of Developments in Legislation & Case-Law in Spain 2023—2024

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1. Introduction: the social and political situation. Implications for religious freedom

The social and political landscape in Spain during 2023 and 2024 was characterised by a certain degree of instability, which also extended to the legal sphere. Describing the situation as a full-blown crisis might be an overstatement,² however, the Government failed to appoint the Supreme Court judges as required by the Constitution, citing political reasons. As a result, the Court's work significantly slowed down. While religious freedom was not at the forefront of the public agenda during this period, it continued to play an important, if subtle, role in various legal and political developments.

In mid-July 2023, general elections produced inconclusive results. Ultimately, the Socialist Party formed a governing coalition with nationalist and left-wing parties —an alliance that shaped the political agenda over the following two years. One of the coalition's most consequential actions was the enactment of the Amnesty Law, aimed at addressing institutional and political issues as well as the normalisation process in Catalonia.³

International conflicts, particularly the wars in Ukraine and Palestine, also influenced Spain's domestic and foreign policies. These crises contributed to a rise in antisemitic incidents within the country, although such occurrences remained relatively

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² A. Motilla considers that the crisis reaches the jurisprudence, the sources and principles of Law, the separation of powers and the functioning of key services of the State (Motilla, Agustín, *Jurisprudencia del Tribunal Supremo sobre cuestiones de Derecho Eclesiástico*, 'Anuario de Derecho Eclesiástico del Estado', vol. XLI, 2025, pp. 787-788.

³ Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña, BOE June 11, 2024. The exclusions established under this provision encompass acts classified as crimes, where their commission is found to be motivated, inter alia, by religious considerations (sect. 2-d).

limited, partly due to the small size of Spain's Jewish population. At the same time, the continued arrival of refugees and immigrants intensified one of the most polarising issues between the political left and right.

Although the COVID-19 pandemic has largely receded, public health remains a key area where religious freedom continues to be debated. Courts have issued rulings concerning religious liberty during lockdown periods.

Additionally, significant legislative developments occurred in the field of bioethics. Notably, a new abortion law was passed. The Law addresses the right to conscientious objection, but some provisions remain ambiguous.

Religious freedom

The legal developments in the field of religious freedom reflect the growing pluralism of society and the pursuit of a broader secularisation within the political agenda. Although there have not been significant advancements, an illustrative example of this trend is the proposal to amend the Criminal Code in order to suppress the crime of offending religious sentiments.⁴ However, this reform has not yet been approved.

The religious education of underage children has increasingly become a controversial issue in cases of parental divorce, particularly when the parents do not share the same beliefs. The best interests of the minors call for a peaceful agreement between the parents, but such consensus is not always achieved. On the contrary, the case law on this matter is becoming increasingly extensive.

The Constitutional Court has issued two judgments addressing this matter. The first judgment does not fully address the substantive issues.⁵ It upheld the father's appeal for protection on procedural grounds, as the child had not been granted the opportunity to be heard during the legal proceedings. The Court emphasised that the child's right to religious freedom required that he be heard, given that he was sufficiently mature to express his own views.

⁴ Proposición de Ley Orgánica de Reforma de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal para la protección de la libertad de expresión, n. 122/000006, Boletín Oficial de las Cortes Generales n. 19-1, September 29, 2023.

⁵ Sentencia del Tribunal Constitucional 5/2023, February 20.

By contrast, the second judgment addresses the core of the matter.⁶ The disagreement between the parents concerned whether the child should attend a religious or a non-religious school.⁷ The child was enrolled in a school with a religious ethos, where the religious dimension, due to the school's guiding principles, extended beyond the subject of religion and permeated the school's educational project. Faced with a 'substantial and irreconcilable divergence' between the parents regarding their religious beliefs — which in turn generated disagreement over the type of schooling the minor should receive— the Court held that the child's best interests require that the educational decision be made in a neutral environment, thereby allowing her to freely form her own convictions.⁸

The Constitutional Court understands that a religious-free school is a neutral school, and, therefore, is more consistent with the principle of neutrality of the State and the separation between Church and State. That reasoning, however, is misleading.

The Court equates neutrality with the absence of religion, but an education devoid of religious content is not truly neutral; it reflects a particular worldview in which religion is treated as a non-desirable or irrelevant element, and implies a choice: education without religion as opposed to religious education.

Neutrality in education means that the State cannot make choices regarding the kind of education -religious or not religious. Thus, public schools must abstain from imparting any form of moral or ethical guidance —a position that is neither feasible nor desirable in practice. Presenting matters that may have a religious element from a purportedly 'neutral' perspective often entails adopting a relativistic stance, in which fundamental questions about human existence and social life are addressed without acknowledging any transcendent or religious dimension. This, in itself, constitutes a choice. In this sense, the idea of a truly neutral school is a myth; every educational approach inevitably conveys a set of values and assumptions.

The Constitutional Court cannot consider a secular or 'neutral' model of education inherently better than one that includes religious or transcendent

⁶ Sentencia del Tribunal Constitucional 26/2024, February 14.

⁷ Given the child's young age, it was not deemed appropriate to take her opinion into account in this case.

⁸ STC 26/2024, FJ 5.

perspectives. The choice about religious education belong to the parents, without interference of the State. Lacking an agreement between the parents on this matter, the Constitutional Court should have decided on other grounds: proximity of the schools, continuity, activities and educational indicators, and so on.

Non-discrimination

The prohibition of discrimination on religious grounds is enshrined in various laws and royal decrees within the field of labor law. The Employment Act of 2023 explicitly establishes the principle of non-discrimination as a cornerstone of employment policy, expressly including religion as a protected characteristic that cannot serve as a basis for differential or unfavorable treatment.⁹ Other sector-specific regulations also incorporate this principle, applying it to particular areas of employment, such as those governing artists or legal professionals.¹⁰

Beyond the sphere of employment, the non-discrimination clause —explicitly including religious grounds— features prominently in legislation underpinning public policy. This clause is embedded, among others, in the Law on the Protection of LGTBI Persons, the Law on Sustainable Cooperation, and the Law on Universities.¹¹

⁹ Ley 3/2023, de 28 de febrero, de empleo, BOE March 1, 2023. See sect. 5, 39, 43 and 45. It was partially developed by Real Decreto 438/2024, de 30 de abril, por el que se desarrollan la Cartera Común de Servicios del Sistema Nacional de empleo y los servicios garantizados establecidos en la Ley 3/2023, de 28 de febrero, de empleo, BOE May 1, 2024.

¹⁰ Real Decreto-Ley 1/2023, de 10 de enero, de medidas urgentes en materia de incentivos a la contratación laboral y mejora de la protección social de las personas artistas, BOE January 11, 2023; Real Decreto 64/2023, de 8 de febrero, por el que se aprueba el Reglamento de la Ley 34/2006, de 30 de octubre, sobre el acceso a las profesiones de la abogacía y la procura, BOE February 9, 2023; Real Decreto 1057/2024, de 15 de octubre, por el que se aprueba el Reglamento de la Abogacía General del Estado, BOE October 16, 2024. See also sect. 5 Ley 5/2023, de 17 de marzo, de pesca sostenible e investigación pesquera, BOE March 18, 2023.

¹¹ Ley 4/2023, de 28 de febrero, de igualdad real y efectiva de las personas trans y garantía de los derechos de las personas LGTBI, BOE March 1, 2023; Ley 1/2023, de 20 de febrero, de cooperación para el desarrollo sostenible y la solidaridad global, BOE February 21, 2023; Ley Orgánica 2/2023, de 22 de marzo, del sistema universitario, BOE March 23, 2023. See also Real Decreto-Ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejercicio y cumplimiento del Derecho de la Unión Europea, BOE June

Non-discrimination is a particularly sensitive issue in the context of immigration. Spain receives a significant number of irregular migrants from North Africa, who arrive almost daily on its coasts, especially in the island territories. This situation has, in certain cases, fueled racist attitudes. In 2024, the Government adopted the Regulation on the Rights and Liberties of Foreigners and their Social Integration.¹² This regulation expressly provides that the Government shall promote the necessary legal reforms to ensure the protection of groups facing a tangible risk of vulnerability as a result of serious political, ethnic, or religious conflicts or disturbances.¹³

Conscientious objection

Conscientious objection is regulated by law in two cases: abortion (since 2010) and euthanasia (since 2021). In 2023, the Law on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy was amended.¹⁴ The section that deals with objection of conscience was only slightly modified, but the changes imply a weaker protection of the right to object to abortion.

The 2010 Law on Sexual and Reproductive Health recognised the right of healthcare personnel to exercise conscientious objection to abortion, provided that such objection did not compromise access to or the quality of healthcare services. Following the 2023 amendment, however, the Law now stipulates that healthcare professionals may only invoke conscientious objection insofar as doing so does not infringe upon the human rights to life, health, and liberty of women who elect to terminate their pregnancies. This reform effectively reconfigures abortion from being merely a medical procedure to being acknowledged as a legal right. Moreover, the Law advances further—arguably excessively—by establishing a hierarchy between the rights at stake. Specifically, it affirms that under no circumstances may the exercise of conscientious

29, 2023; Real Decreto 708/2024, de 23 de julio, por el que se aprueba el Estatuto de las personas cooperantes, BOE July 24, 2024. The non-discrimination clause can also be found in the legislation enacted by the Autonomous Communities.

¹² Real Decreto 1155/2024, de 19 de noviembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, BOE November 20, 2024.

¹³ See Final Disposition 3.

¹⁴ Ley Orgánica 1/2023, de 28 de febrero, por la que se modifica la Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo, BOE March, 1, 2023.

objection limit a woman's right to decide whether to undergo an abortion. Nevertheless, the creation of such a hierarchy appears problematic: while the Law recognises abortion as a right, conscientious objection equally constitutes a fundamental right and should not be subordinated.

The amended Law also missed an opportunity to clarify who is entitled to exercise conscientious objection. While it is clear that professionals directly involved in performing abortions may object, doubts remain regarding nurses and other auxiliary medical staff. A formal clarification would have been highly beneficial to eliminate legal uncertainty regarding the scope of this right.

Finally, the Law introduces a new procedure for declaring the intention to object: healthcare professionals must register in a government-run registry. This requirement has sparked controversy. The Medical Chamber has expressed its disappointment with the creation of these registries, voicing concerns that registration could result in negative consequences for those who object, despite the declaration of sect. 3 of the Law, that reassures the non-discrimination because of religion as a principle of the Law.

On May 2023, the Constitutional Court issued a judgment on the Law of abortion of 2010,¹⁵ thus when that Law had already been amended, and 13 years after the appeal against the Law was filed with the Constitutional Court. It considered the Law in accordance with the Constitution.

Religious entities

In September 2023, the Bahá'í Community obtained official recognition as a religious denomination with deep historical roots in Spain.¹⁶ Such recognition entails the adoption of measures designed to reinforce the collective exercise of the right to religious freedom, as enshrined in Article 16 of the Spanish Constitution. Among the most relevant consequences is the capacity to solemnise marriages in accordance with its own religious rites, with full civil validity.

In the same year, the Government announced its intention to extend to all denominations recognised as having deep roots the tax exemptions and other benefits

¹⁵ STC 44/2023, May 9.

¹⁶ Orden PCM/1065/2023, September 18, BOE September 26, 2023.

traditionally conferred upon non-governmental organizations.¹⁷ Up to that point, these benefits were exclusively enjoyed by the Catholic Church and by those religious communities that had concluded cooperation agreements with the State —namely, the Jewish, Islamic, and Evangelical federations. This political commitment constituted a significant step towards achieving substantive equality among the various religious denominations in Spain. Nevertheless, the commitment has not yet been translated into binding legislation. Although the Government has introduced two amendments in this regard, neither has thus far been enacted.

Religious education

Regarding religious education in schools, the curriculum for Evangelical Religion teaching for the different educational stages has been published.¹⁸ The prohibition of religious symbols in schools has been endorsed as long as no distinctions are made between beliefs. The Spanish Episcopal Conference has also released data on students who chose the subject of Catholic Religion for the 2023–2024 school year.¹⁹

The Constitutional Court issued two rulings in 2023 on religious education at school.²⁰ They thoroughly address how the Organic Law on Education²¹ affects religious freedom and the right of parents to choose the religious and moral education they want for their children, in response to the unconstitutionality appeals filed by the parliamentary groups Vox and the Popular Party.

Both parliamentary groups alleged that this Law eliminates the subject of religion from the syllabus in all educational stages, thereby violating Articles 16.1 (religious freedom), 16.3 (State's duty of cooperation with religious confessions), and 27.3 (parents' right for their children to receive religious and moral education in accordance

¹⁷ See the announcement in <https://www.mpr.gob.es/prencom/notas/paginas/2023/250423-acuerdo-regimen-fiscal-confesiones.aspx>

¹⁸ Resolución de 3 de abril de 2024, de la Secretaría de Estado de educación, por la que se publican los currículos de la enseñanza de religión evangélica correspondientes a educación infantil, educación primaria, educación secundaria obligatoria y bachillerato, BOE April 5, 2024.

¹⁹ See <https://www.conferenciaepiscopal.es/iglesia-en-espana/iglesia-en-numeros/>

²⁰ STC 34/2023, April 18, and STC 49/2023, May 10.

²¹ Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación, BOE December 30.

with their convictions) of the Spanish Constitution. They considered that the mention of the Agreement between the Spanish State and the Holy See of 1979, that imposes the subject as an option in public schools, is merely formal and inconsequential if the Law does not explicitly include the subject in the organisation of education.

The State Attorney argued that the fact that religion is not included in the general lists of subjects is not unconstitutional, as these lists refer to subjects that all students must take, and religion is an optional subject. It recalled that some other previous laws on education did not expressly include religion in these lists either.

The Constitutional Court rejected the challenges related to the teaching of religion. It confirmed that the Law on Education, through the second additional provision, guarantees the compulsory offering of the Catholic religion as an 'area or subject' in the corresponding educational levels, and its voluntary nature for students. It affirmed that the debate on whether the religion subject should be explicitly listed alongside other common subjects, is a 'matter of free configuration by the legislator' and not a constitutional imperative.

Other issues considered by the ruling were the determination of the curriculum and designation of religion teachers. The judgment clarifies that, although the right to religious freedom and the State's duty of cooperation with religious denominations allow for the teaching of religion, this does not imply a fundamental right of the denominations to determine the curriculum, learning standards and textbooks. The 1979 Agreement only attributes to the ecclesiastical hierarchy the power to 'point out' the contents and 'propose' the books.

Regarding the proposal of religion teachers, the Court rejects the challenge of the Popular Party that alleged its suppression. Ruling 49/2023 specifies that the paragraph of the third additional provision of the previous Law that attributed to the religious confessions the proposal of these teachers, was not eliminated. This means that, in practice, the religious denominations maintain their capacity to propose the persons who will teach the subject of religion.

The Supreme Court dealt with another matter that has been controversial: the alternative subject that must be imparted to students who do not choose religion. According to the laws on education, students who choose not to study religion (that in Spain is confessional religion) will receive adequate educational attention planned by the centres and education councils. These activities will focus on projects that promote

autonomy and responsibility, reinforcing cross-curricular and interdisciplinary aspects of the curriculum. The religion grade will not be taken into account in competitive academic processes, nor for university admission, nor in applications for scholarships.

Whenever the curriculum for the subject offered as an alternative to religious education is regulated, controversies often arise regarding its content. It is challenging to design a curriculum that is both educationally meaningful and does not place students who choose religious education at a disadvantage by depriving them of shared learning opportunities.

The Supreme Court dismissed all appeals filed against the regulation of the alternative subject established by the Law on Education.²² According to the Court's rulings, students who choose religious education are not placed at a disadvantage compared to those who do not, insofar as transversal skills relevant to the academic curriculum are also developed in religious education classes. Other longstanding controversies —such as the possibility of invoking conscientious objection in civic education subjects, or the demand for religious education to be included in the calculation of the academic grade point average— had already been resolved by the Supreme Court in earlier decisions, to which the Court now refers.

Religious symbols

There is a well-established body of case-law in Spain concerning the presence of religious symbols in public spaces. The Supreme Court has held that the principle of State neutrality regarding religious beliefs does not entail ignoring or rejecting the religious facts and traditions embedded in society. Religious symbols and practices are therefore recognized as part of Spain's cultural and historical heritage and are considered compatible with the constitutional duty of neutrality.

Against this backdrop, the Supreme Court issued a ruling in 2023 upholding the demolition order of a cross. The decision was not based on the mere fact that it was a cross, but rather because it incorporated a commemorative plaque listing the names of those who had died fighting for the rebel army during the Spanish Civil War.²³ Under the

²² STS n. 785/2023, June 13; 928/2023, July 10; and 1025/2023, July 18.

²³ STS n. 1697/2023, December 14, ECLI: ES:TS:2023:5411

Law of Democratic Memory of 2007, plaques, emblems, and objects in public spaces that serve to exalt one side of the conflict must be removed, unless they are strictly private or possess artistic or religious value specifically protected by law.²⁴

Although the cross had originally been erected in the 19th century, the Court found that its original religious significance had been eclipsed by its later association with the glorification of one faction in the Civil War.²⁵ The ruling thus prioritised compliance with the democratic memory framework over the preservation of the monument. Nonetheless, it could be argued that more moderate alternatives might have been considered to preserve the religious symbol while removing its contentious connotations.

²⁴ Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura, BOE December 27, 2007. This Law was repealed and a new one was approved in 2022. However, the Law that applies to the case is the one of 2007. It should be noted that the new Law of 2022 does not include among the exceptions the removal of the signs of religious interest.

²⁵ According to the Court, “We are dealing with a religious symbol, a cross, that contains elements that prevent it from being recognized as a neutral symbol with purely artistic or artistic-religious value. On the contrary, its presence in a public space allows us to appreciate an act of exaltation, as it enhances the merit of that civil conflict by listing those who died on one side. This implicitly entails the condemnation of the opposing side in the social perception.” See FJ 6.